

**Fiscal Year 2010 DEQ Fee Proposal  
National Pollutant Discharge Elimination System Permit Fees  
November 3, 2008**

**Overview - NPDES Permit Program**

The federal Clean Water Act requires that all discharges to the surface waters of the United States be authorized by a federal permit under the National Pollutant Discharge Elimination System (NPDES) Program. The Department of Environmental Quality (DEQ) has authority for administering this program in Michigan. Permits for industrial, commercial, municipal, and other dischargers are processed and issued by the DEQ in accordance with Part 31, Water Resources Protection, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (Act 451), associated rules, and the Governor's Executive Orders. The maximum term for an NPDES permit is five years. The permit may then be reissued, incorporating new state and federal requirements.

Fiscal Year (FY) 2007 activities performed in administering the DEQ's NPDES program and staffing levels are presented below in full-time equivalent (FTE) positions:

<u>Subactivity</u>	<u>Total FTE</u>
Permit issuance and development	37.3
Compliance	52.3
Enforcement	6.0
Total	95.6

There were 72.6 full-time equated positions in FY07 that worked in this program that were not funded by the NPDES fees. NPDES fees supported 23 FTEs.

**Program Funding**

In 2004, Part 31 of Act 451 added NPDES permit fees and implemented the DEQ's NPDES Discharge Permit Program. Act 91 set up a fee structure with several levels of annual fees, plus an application fee, authorized to begin in 2004 until October 1, 2009. This proposal renews the NPDES discharge permit fees to continue the DEQ's NPDES Discharge Permit Program. The fees should be equitable and proportional to the relative threat to the environment posed by the discharge and the annual volume of discharge. The fee structure proposed provides adequate revenue to support a core program that protects surface water. The structure for administrative responsibilities, such as billing and collecting fees, has already been established and is maintained by this proposal.

The NPDES Permit Fees generated \$2.9 million in FY07. The renewal is for NPDES Permit fees that will generate \$5.34 million per year. The proposed fee increase is related to the manner in which the fees were assessed in the 2004 fee legislation, not to a program expansion, and is intended to continue support of a core program.

The overall funding for the NPDES permit program is as follows:

Revenue for NPDES		
	2007	2008
General Fund	2,150,000	2,329,400
USEPA	4,644,000	4,644,000
Fees	2,900,000	2,900,000
Total	9,694,000	9,873,400
FTE		
Actual=	95.6	92.5*

\*=estimated

The staffing levels for this program are presented below in FTEs. Based on static funding in the face of expenses, the program has seen a recent reduction in staffing.

	1999	2000	2001	2002	2005*	2006	2007
Permit issuance	53.6	56.6	55.2	48.0	34.1	41.2	37.3
Compliance	46.8	43.8	30.9	33.5	43.5	57.5	52.3
Enforcement	7.1	6.5	8.5	8.0	5.6	6.2	6.0
Total	107.5	106.9	94.6	89.5	83.2*	104.9	95.6
					(105.2)		

\*=2005 report did not include time that staff did not specifically charge to one of these areas, about 22 FTEs. Subsequent reports corrected this.

Note: 1999-2002 information is from the 2004 fee proposal; 2005-2007 information is from fee reports

### Workload Evaluation

A detailed workload analysis was done in 2004 for the original NPDES fee package. This analysis showed 130 FTEs were needed to support the core program. The core program was found to be able to be completed with 105 FTEs instead of 130 FTEs. The DEQ has reexamined the workload and determined that 105 FTEs instead of 130 FTEs is necessary to meet the core program. This is possible through the efficiencies gained by the DEQ since 2004. In fact, over 100 more permit authorizations were processed in FY08 compared to FY05. However, the NPDES permit program is presently understaffed at 95 FTEs. This staffing level is resulting in fewer inspections, and compliance and enforcement actions.

### Proposed Program Funding Change

The NPDES Permit Fees generated \$2.9 million in FY07. The renewal is for NPDES Permit fees that will generate \$5.34 million per year. The proposed fee increase is related to the

manner in which the fees were assessed in the 2004 fee legislation, not to a program expansion, and is intended to continue to support a minimum level of staff in this program.

The DEQ's NPDES Discharge Permit Program presently consists of about 95 FTEs. At this level, the DEQ is unable to complete the minimum duties associated with this program, such as issuing NPDES permits according to legislative timelines and conducting minimum compliance activities such as inspections. To adequately support this core program, which would assure issuing NPDES permits according to legislative timelines and conducting minimum compliance activities such as inspections, a minimum level of 105 FTEs is necessary. Given the funding that is available from the State's General Fund and the federal grant (Section 106), following is the FTE breakdown for FY2010:

State General Funds:	22 FTE
Federal Funds:	43 FTE
Fee supported:	40 FTE

The present level of funding is sufficient to support a total of 88 FTEs, while there are currently 95 FTEs in the program. The remainder of the funding is obtained by spending the available fund balance, which is not sustainable.

A. FY2010

The estimated funding need for FY2010 to support 40 FTEs by program fees is as follows:

$$40 \text{ FTEs} \times \$133,500/\text{FTE}^* = \$5,340,000$$

\*Includes a 25 percent assessment for Central Administration and the Department of Information Technology (DIT). See the attached document for an explanation of these costs.

B. FY2010 Funding Projections

The DEQ calculated the FY2010 funding estimate using the existing fee structure:

Estimated fee revenue based on current fees: \$2,900,000. There is an estimated \$2,440,000 funding shortfall. Increasing the fees to raise \$5,340,000 results in an 84 percent increase in the fee revenue. This is attributed to two items: the increase necessary to support a core program and sustain this going forward, in which the fees support 40 FTEs versus 22 FTEs currently (which results in a 61 percent increase in the fee revenue), and a 25 percent assessment for Central Administration and DIT, which was not accounted for in the fees in 2004.

Inflation considerations

After the fees were enacted for FY04, the rate of inflation was 1.3, 2.5, and 3.7 percent for 2004, 2005, and 2006, respectively, using the Detroit Consumer Price Index. Using these rates of inflation and an estimated rate of 3 percent for 2008-2010 results in a cumulative increase of about 18 percent for the fees. Alternatively, the average inflation rate for the recent period was 2.65 percent, which yields about 19 percent over these seven years.

### C. Targeted Approach

The DEQ evaluated different fee structures that would raise the funding needed to support 40 FTEs in FY2010, which requires a total fee revenue of \$5,340,000 and has targeted areas by need.

The DEQ took on major new initiatives in the past few years without any changes in the fee structure. Two of these have had major impacts on the NPDES program – Ballast water discharge permits and Concentrated Animal Feeding Operations (CAFO). For Ballast Water discharge permits, the DEQ responded to changes in Part 31 which required discharge permits for Oceangoing Vessels which come into Michigan's ports. This change in Part 31 helped address the Aquatic Nuisance Species problem that is pervasive in the Great Lakes. The DEQ developed and implemented a Ballast Water permitting program for these Oceangoing Vessels. The first year of the permits for Oceangoing Vessels was 2007, with 92 vessels applying for and obtaining coverage under the State's General Permit. Michigan's permit program is unique in the country, although Minnesota and Wisconsin are currently developing similar permitting programs. The current fees for these vessels are a \$75 application fee and a \$150 annual fee. The first year of permitting only generated application fees, with a total of only \$6,900 collected in application fees. For the annual fees, the DEQ invoiced a total of only \$11,250 in annual fees. Given the transient nature of these vessels, the fee changes recommended include raising the application fee to the same level as the application fee for a Minor Individual Permit (currently \$400), and raising the annual fee to the same level as a Low-Flow Industrial Individual Permit (currently \$1650). Raising the application fee is necessary to prevent the Oceangoing Vessels from terminating their permit each year to avoid the annual fee.

For CAFOs, the DEQ recently increased the NPDES permitting effort due to implementation of the CAFO rule pursuant to Part 31. This resulted in about 180 CAFOs now being covered by NPDES permits. Due to increasing environmental issues associated with these operations, the amount of effort increased in the past few years. The effort spent on these operations is about 10 FTEs per year presently, with the current fees supporting less than 0.5 FTEs. Currently, the fees for most CAFOs include an application fee of \$75 and an annual fee of \$150 for the General Permit or \$600 for an individual permit. Current fee revenue is less than \$50,000 per year. The fee change recommended here sets a specific fee category for CAFOs that is similar to the Industrial Individual Permit for high-flow discharges (currently \$3,650 per year).

A third targeted fee change makes the Industrial General Permit annual fees similar to the Municipal General Permit annual fees. Currently, the Industrial General Permit annual fees are \$150 for a low-flow discharge and \$400 for a high-flow discharge, while the Municipal General Permit annual fees are \$400 for a low-flow discharge and \$600 for a high-flow discharge.

These three targeted changes could bring in an estimated total of \$894,400 in additional income if implemented at the current fee structure. The breakdown of these by category is: Ballast Water permit = \$112,750; CAFO permit = \$642,000; and Industrial General Permit = \$139,650.

With these targeted increases accounted for, the increase in fees necessary to raise the \$5,340,000 is left at \$1,546,000, which is a 44 percent increase. The following tables show the current fee structure and number of permittees, the targeted increase, and the total fee increase necessary to raise the \$5,340,000.

This DRAFT fee proposal includes a provision for an annual inflation adjustment based on the Detroit Consumer Price Index (CPI) with no sunset date for this fee. However, the fee

proposals included in the FY2010 Executive Budget may not include a CPI adjustor. In that event, the DEQ proposes a sunset date for this fee.

Annual Fees						Targeted increase		Total Increase	
		Fee				Fee	Revenue	Fee	Revenue
Major	Number	Current fee	Revenue						
Industrial	72	8700	626400			8700	626400	12530	902160
Muni>500mgd	1	213000	213000			213000	213000	306720	306720
Muni 50-500	5	20000	100000			20000	100000	28800	144000
Muni10-50	21	13000	273000			13000	273000	18720	393120
Muni <10	74	5500	407000			5500	407000	7920	586080
Total									
Minor									
Ind GP High Flow	87	400	34800			600	52200	865	75255
Ind GP Low Flow	489	150	73350			400	195600	580	283620
Ind IP High Flow	70	3650	255500			3650	255500	5260	368200
Ind IP Low flow	146	1650	240900			1650	240900	2380	347480
Muni >10mgd	0	3775	0			3775	0	5450	0
Muni 1-10	27	3000	81000			3000	81000	4320	116640
Muni <1	102	1950	198900			1950	198900	2810	286620
Muni GP High Flow	0	600	0			600	0	865	0
Muni GP Low Flow	211	400	84400			400	84400	580	122380
Muni CSO	21	6000	126000			6000	126000	8640	181440
WWSL	38	1525	57950			1525	57950	2200	83600
				Ballast	75	1650	123750	2376	178200
Ag Fees									
IP or GP	69	600	41400	Ag non CAFO	20	600	12000	865	17300
Minor	41	150	6150	CAFO	180	3650	657000	5260	946800
Total	1474		2819750				3704600		5339615

**NPDES Fee Proposal**  
**Annual Permit Fees**

<b>EPA Major Facility Fees</b>	<b>Current Fees</b>	<b>Proposed Fees</b>
Industrial-Commercial facilities .....	\$8,700.00 .....	\$12,530.00
Municipal 500 MGD or greater .....	\$213,000.00 .....	\$306,720.00
Municipal 50 MGD to less than 500 MGD .....	\$20,000.00 .....	\$28,800.00
Municipal 10 MGD to less than 50 MGD .....	\$13,000.00 .....	\$18,720.00
Municipal less than 10 MGD .....	\$5,500.00 .....	\$7,920.00

**EPA Minor Facility Fees**

Industrial-Commercial General Permit, high-flow .....	\$400.00 .....	\$865.00
Industrial-Commercial General Permit, low-flow .....	\$150.00 .....	\$580.00
Industrial-Commercial Individual Permit, high-flow .....	\$3,650.00 .....	\$5,260.00
Industrial-Commercial Individual Permit, low-flow .....	\$1,650.00 .....	\$2,380.00
Municipal, 1 MGD or greater .....	\$3,000.00 .....	\$4,320.00
Municipal, less than 1 MGD .....	\$1,950.00 .....	\$2,810.00
Municipal, General Permit, high-flow .....	\$600.00 .....	\$865.00
Municipal, General Permit, low-flow .....	\$400.00 .....	\$580.00
Municipal CSO .....	\$6,000.00 .....	\$8,640.00
Wastewater Stabilization Lagoon .....	\$1,525.00 .....	\$2,200.00
Ballast Water .....	\$150.00 .....	\$1650.00

**Agricultural Purpose Fees**

Individual or General Permits .....	\$600.00 .....	\$865.00
-------------------------------------	----------------	----------

**Unless the facility is an:**

EPA Major Facility (excluding Farmers' Cooperative Corporations) .....	\$8,700.00 .....	\$12,530.00
--	------------------	-------------

**Or an**

EPA Minor Facility (CAFOs) .....	\$150.00 .....	\$5,260.00
----------------------------------	----------------	------------

**Definitions**

MGD = 1,000,000 gallons per day

High Flow = 1 MGD or greater

Low Flow = Less than 1 MGD

This DRAFT fee proposal includes a provision for an annual inflation adjustment based on the Detroit Consumer Price Index (CPI) with no sunset date for this fee. However, the fee proposals included in the FY 2010 Executive Budget may not include a CPI adjustor. In that event, the DEQ proposes a sunset date for this fee.

**Application Fees**

	<b>Current Fees</b>	<b>Proposed Fees</b>
EPA major facility, individual permit.....	\$750.00 .....	\$750.00
EPA minor facility individual permit, CSO permit, or wastewater stabilization lagoon individual permit .....	\$400.00 .....	\$400.00
EPA minor facility, general permit.....	\$75.00 .....	\$75.00
Ballast water general permit .....	\$75.00 .....	\$400.00



## **Evaluation of Need for Proposed Funding Change**

Without the proposed fee increase, the program cannot meet its statutory responsibility to protect surface waters and process permits pursuant to Part 31. This has a detrimental impact on the environment and economic growth. Examples of the negative effects of a reduced program include:

- Reductions in compliance efforts, including facility inspections, results in an increased risk of pollutants being discharged to the surface waters. A credible compliance program is necessary to assure that water dischargers obtain and follow their permits.
- Reductions in program activities needed for the prevention of future adverse environmental impacts. The NPDES permit program has been effective in controlling and preventing pollution before it becomes a major problem. An example is controlling phosphorus from dischargers so that downstream lakes and impoundments do not experience algal blooms or unacceptable dissolved oxygen levels. Other examples include avoiding sediment contamination or fish consumption advisories by regulating pollutants. Reduced effort in the program could result in expensive cleanup efforts at a later date that would take years to remediate.
- Reduced effort to address facilities that need a discharge permit but have never been permitted before. Without continued effort in this area, unpermitted facilities will continue to have an unfair advantage over permitted facilities because treatment to meet state standards is not provided.
- Delays in timely issuance of new and increased use permits. Municipalities and industries rely on timely permit processing for expansions or new facilities in the state. Businesses cannot build or expand in a timely fashion unless permits required by state law are issued in a timely fashion. This could result in businesses choosing to locate outside of Michigan.
- Delays in the reissuance of permits needed to incorporate up-to-date requirements in permits. Timely reissuance of permits incorporates new water quality standards and treatment technology standards. Permit term limits are set at five years for this very reason. Failure to reissue permits in a timely manner compromises the water quality improvements the program has achieved.
- Without adequate funding to continue the core program, the USEPA's commitments for permit reissuance are not met, which jeopardizes federal funding and program delegation. The regulated community has long maintained its desire that the DEQ administer the NPDES program rather than the USEPA.

## **Improvements, Efficiencies, and Program Reductions**

Steps taken to improve the NPDES discharge permit program since fees were initiated by Act 91 of 2004:

### *NPDES Permit Issuance Process and Program Improvements*

The DEQ implemented efficiencies in the process and thus continued with no NPDES permit backlog since 1999. The process includes permits being on the same watershed reissuance

schedule, streamlining the DEQ's resources, and integrated protection of the waters of the state. Additional internal actions taken to improve efficiencies included:

- Conversion from paper records to electronic records in the DEQ's database. This saves the program time and materials.
- Updating permitting procedures to consolidate, clarify, and streamline NPDES and groundwater permitting procedures.
- Developing and implementing a uniform procedure for NPDES and groundwater permit application letters, to improve the reissuance of permits.
- Developing and implementing a uniform procedure for NPDES and groundwater permits that expire, to improve the accuracy of the database and protect the environment.
- Reviewing the NPDES and groundwater permit formats, with the intent to make the formats similar to improve communication and understanding by permittees and the DEQ staff.
- Review and revision of the NPDES permit application, to improve permit applications, and with the regulated community to review the revisions, reduce permittee time spent on applying and improve the quality of applications.
- Aligning expiring NPDES and groundwater permits that are in the same watersheds. This takes advantage of monitoring and district compliance efforts and improves efficiencies.
- Aligning inspection planning (two years prior to permit issuance) for up-to-date independent compliance information and addressing issues of noncompliance prior to permit issuance.
- Implementing the 2005 revisions to Part 31 of Act 451 requiring Oceangoing Vessels (ballast water) to obtain a Part 31 permit if they come into a Michigan port. This was done using many of the efficiencies described above, including issuing a General Permit in October 2006, and subsequently covering 92 Oceangoing Vessels under this General Permit in 2007. The DEQ communicated permit coverage information with these vessels primarily using e-mail and faxes, which resulted in timely permit coverage, without causing a significant strain on program resources.

### *Compliance Improvements*

The DEQ completed a Compliance Initiative to address facilities that needed a discharge permit but never obtained one before. This initiative started as a result of the groundwater discharge permit program, but also included surface water discharges under NPDES. In 2006, the second initiative began, aimed at gaining compliance from facilities that discharged to the waters of the state but never obtained the necessary permit from the DEQ. The initiative's goal was to provide an opportunity for these dischargers to voluntarily pursue compliance with the State of Michigan wastewater discharge laws by obtaining the proper permit and immediately placing them into the DEQ's compliance tracking system via an administrative consent order. The initiative expired on September 30, 2006. As a result of this initiative, 271 facilities entered into the initiative, with 133 permits issued under the storm water permit, 123 under the groundwater permit, and 15 under the NPDES permit. This resulted in \$139,760 in additional permit fees collected in 2006.

The DEQ consolidated all of our inspection tracking and follow-up actions into one database. Previously, each district tracked what they did separately, thus making it difficult to evaluate workloads and trends. We also captured deficiencies found during inspections in our database. This helped us determine how to address problems (if many similar problems are found, we can target training to address the problem).

Align terminologies and definitions for types of inspections (reconnaissance inspections, compliance evaluation inspections, and compliance sampling inspections).

#### *Internet Access and Electronic Data Submittal Improvements*

The DEQ implemented a Web access to permit information. This allows the public access to permit-related information directly on the Web, instead of requesting the information and/or filing a FOIA request. This also reduces the amount of staff time spent responding to these requests.

The DEQ implemented electronic Public Noticing on the DEQ Web site. This allowed placement of the draft permit, permit applications, and related documents on the Web site for immediate access by the public. This proved to be very successful in disseminating information very rapidly to the interested public, with subsequent savings from newspaper notices. This also reduces the amount of staff time spent responding to requests for these documents.

The DEQ implemented the use of e-mail to send permit-related documents to applicants, instead of paper copies via mail services. This reduces time, mailing costs, and materials in this program, and provides more timely information to the applicant and interested parties.

The DEQ developed the ability for the permittee to electronically submit their discharge monitoring reports (e-DMR submittals). This saves both the permittee and the DEQ time, and eliminates the error rate associated with manual entry of the data by the DEQ when paper forms are used.

#### *Fee Coordination Improvements*

The DEQ addressed many questions, comments, and permit change requests since the fees were initiated in 2004. These questions, comments, and requests are expected when a new fee program is initiated. The number declined substantially since the first year (2004). The DEQ used letters, emails, associations, conferences, and the DEQ Web site to provide information regarding actions related to Act 91 to the regulated community.

The DEQ revised and clarified the fee collection and cash handling procedures for NPDES and groundwater fees, including establishing the WB Fee Committee, and developed a WB procedure for fee collection and follow-up activities.

### **Comments and Follow-Up Stakeholders Meeting**

All interested parties are invited to present comments on the proposed NPDES fees. Comments may be submitted to:

Dan Dell  
Permits Section  
Water Bureau  
Department of Environmental Quality  
P.O. Box 30273  
Lansing, Michigan 48909-7773  
Telephone: 517-335-4130  
e-mail: [delld@michigan.gov](mailto:delld@michigan.gov)

A follow-up stakeholders meeting will be held to seek additional input on the proposed fees. The public meeting will be held from 10:30 a.m. to 12:00 p.m. on December 1, 2008, at Constitution Hall, Con Con Rooms A & B, 525 West Allegan Street, Lansing, Michigan.

Attachment  
Explanation for Including a  
Central Support and DIT Overhead Costs Factor  
In  
DEQ Fee Structures  
12/21/06 Revised

**Purpose**

This paper provides the explanation for why inclusion of a standard factor for central administration, terminal leave, and DIT overhead costs is essential in every DEQ fee structure.

**Definition**

Central administration and DIT overhead costs consist of the following items of expenditure:

- All salary and wage costs, office supply costs, contract costs, and travel costs for the Executive Division and Department Support staff that support department-wide operations, including
  - Director, Deputy Directors, central policy staff, legislative liaison, information officer, and support staff in the Executive Division
  - Budget, Business Services, Financial Management, purchasing, vehicle management, district office support, and Human Resources (personnel) functions that support department-wide operations.
- All salary and wage costs, office supply costs, travel costs, computer desktop support costs, tele- and data-communication costs, computer equipment costs (e.g., servers), and maintenance and application development costs provided by DIT to support DEQ department-wide operations.
- All rent and building occupancy costs for housing all DEQ staff.
- Payoffs for terminal leave accruals made to employees who leave the DEQ are treated as an administrative expense and allocated to all DEQ funding sources. This terminal leave allocation is based on the funding of personnel costs in the DEQ. It averaged 1 percent of the total payroll costs each year.

**Funding for Overhead Costs in the DEQ Budget**

The DEQ's budget always funded central administration, terminal leave, and DIT overhead costs. Historically, one of the primary sources of funding for these overhead costs was General Fund-General Purpose (GF-GP) monies; however, GF-GP funding in the DEQ's budget declined significantly over the last five fiscal years. As recently as FY02, GF-GP monies funded 28 percent of the DEQ's budget, compared to only 9 percent of the budget funded by GF-GP in FY07. (See Attachment #2.) Most of the remaining GF-GP funding provides state match to earn federal grant monies.

Consequently, as GF-GP funding for DEQ declined, the funding for central administration and DIT overhead costs shifted to a much greater reliance on state-restricted fund sources, none of which were structured to provide sufficient revenue to support overhead costs. (See attached chart.) In several cases, state-restricted fund sources with available 'healthy' balances replaced

lost GF-GP revenues, resulting in an inequitable allocation of overhead costs across state-restricted fund sources.

The annual DEQ budget is supported by approximately 55 separate state-restricted revenue sources. The state-restricted fund revenue sources include all permit fees, bond revenue (e.g., CMI—Clean Michigan Initiative), unredeemed bottle deposit revenue, oil and gas severance tax revenue, and refined petroleum fund revenue). When the statutes establishing these restricted fund sources (fees, et al) were established, the fee schedules and funding assumptions were based only on supporting the immediate cost of the program staff conducting the program, because there was adequate GF-GP funding available to support major portions of the central administration and DIT overhead costs for the DEQ.

NOTE: The Department of Information Technology was established in 2002, with specific funding first appropriated for the department in FY03.

### **Why must a factor for Central Support and DIT Overhead Costs be included in DEQ fee structures?**

The simple explanation is that the funding for overhead is to be allocated/spread equitably/fairly across all fund sources that support the DEQ's programs. Thus, the fee structures that produce revenue for the state-restricted funds must include a factor sufficient to support overhead costs.

The current allocation of state-restricted funding is significantly not equitable across the restricted fund sources. The state-restricted revenue fund sources with large fund balances (e.g., Refined Petroleum Fund, Oil and Gas Severance Tax, Cleanup and Redevelopment Fund, etc.) are paying more than their equitable/fair share of the overhead costs. In contrast, fee-based state-restricted fund sources are paying significantly less than their fair share of overhead costs.

The DEQ financial management staff developed a responsible methodology for the fair and equitable allocation of central support and overhead costs across all fund sources. This methodology is based on the staffing supported by the various fund sources throughout the DEQ. In order for the fee-based state-restricted revenue sources to support their fair share of central support and IT overhead costs, it is necessary to include a factor for these costs in each DEQ fee structure. The factor was determined to be 25 percent.